be affirmed. Such a procedure would of course entail the often lengthy process of obtaining a jury verdict in many cases where, under Section 457(a) of the Civil Practice Act, a verdict would be directed. Whether the saving of new trials would more than compensate for the time and trouble thus necessitated could only be determined by experiment.

EFFECT OF ALTERATION OF A NEGOTIABLE INSTRUMENT UPON DRAWEE'S ACCEPTANCE OR PAYMENT.—Interesting and novel is the problem that has arisen in the recent case of *National City Bank of Chicago* v. *National Bank of the Republic of Chicago* (Ill. 1921) 132 N. E. 832. X stole a draft and, after skillfully substituting his name for that of the original payee, offered it to Y in payment for jewelry. Y had the draft accepted by the drawee bank and then parted with the jewelry on the faith of the acceptance. Y deposited the instrument in the defendant bank which collected from the drawee. Having learned of the alteration, the drawee sought to recover the amount of the draft from the defendant, as money paid by mistake. The court denied recovery on the ground that the drawee by accepting admitted the existence of the payee and his capacity to indorse.

Under the doctrine of *Price* v. *Neal*,[1] adopted by the Negotiable Instruments Law,[2] a drawee who has paid a check or draft to which the drawer's name has been forged, cannot recover the sum paid.[3] This exception to the general rule of law permitting recovery of money paid under a mistake of fact has usually been extended to the case of certification or payment by a drawee bank in misreliance on the state of the drawer's account.[4] But the marked tendency is to limit this doctrine strictly and to favor the application of the usual rules governing mistakes. Hence, many courts have arbitrarily assumed negligence and have allowed recovery by the drawee in the absence of prejudicial change of position by a bona fide purchaser for value.[5] Where the indorsement of the payee or other indorser has been forged, the drawee can generally recover the money paid.[6] Where both the drawer's and payee's signatures have been forged, opposite results have been reached, the sounder view, assuming *Price* v. *Neal* is law, denying recovery by the

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[1] (1762) 3 Burr. 1354.

[2] N. I. L. § 62. In fact, this section only covers an acceptance, but it is generally agreed that by implication it includes actual payment.

[3] *State Bank* v. *Cumberland Savings & Trust Co.* (1915) 168 N. C. 605, 85 S. E. 5; *Cherokee Nat. Bank* v. *Union Trust Co.* (1912) 33 Okla. 342, 125 Pac. 464; *McClendon* v. *Bank of Advance* (1915) 188 Mo. App. 417, 174 S. W. 203. This doctrine is unfortunate in the sense that it disrupts an otherwise settled rule of law and produces logical inconsistencies.

[4] See (1921) 21 COLUMBIA LAW REV. 805.

[5] *Newberry Savings Bank* v. *Bank of Columbia* (1911) 91 S. C. 294, 74 S. E. 615; *Canadian Bank of Commerce* v. *Bingham* (1907) 46 Wash. 657, 91 Pac. 185; *Williamsburg Trust Co.* v. *Tum Suden* (1907) 120 App. Div. 518, 105 N. Y. Supp. 33; *National Bank of California* v. *Miner* (1914) 167 Cal. 532, 140 Pac. 27, (*semble*); *Baldinger & Kupferman Manufacturing Co.* v. *Manufacturers-Citizens Trust Company* (1915) 93 Misc. 94, 156 N. Y. Supp. 445 (*semble*); see (1921) 21 COLUMBIA LAW REV. 805, 807.

[6] *United States Mortgage & Trust Co.* v. *Liberty National Bank* (1920) 112 Misc. 149, 184 N. Y. Supp. 32; *Farmers' Bank & Trust Co.* v. *Farmers' State Bank* (Ark. 1921) 231 S. W. 7; *State* v. *Merchants' National Bank of St. Paul* (1920) 145 Minn. 322, 177 N. W. 135; *Leather Manufacturers' Bank* v. *Merchants' Bank* (1888) 128 U. S. 26, 9 Sup. Ct. 3 (before N. I. L.). The reason advanced in the last two cases for holding the collecting bank liable on its indorsement seems wrong, for the drawee is not a purchaser. *Cf. Cherokee Nat. Bank* v. *Union Trust Co., supra,* footnote 3. Otherwise *Price* v. *Neal* would have to be denied also, since the holder upon indorsing would be warranting the drawer's signature. Such a result has actually been reached where the indorser was the payee. *Williamsburg Trust Co.* v. *Tum Suden, supra,* footnote 5.

drawee.[7] Where a check or other bill was raised in amount before acceptance, the courts before the Act generally held that the drawee did not vouch for the genuineness of the body of the bill and could recover the money paid.[8] Likewise, under the Act the drawee is held to affirm only the genuineness of the drawer's signature and the existence of sufficient funds to meet the instrument.[9] Only two cases, both very recent, have been found with facts similar to the instant case, i. e., eradication of the payee's name and insertion of another, and both are opposed to the instant case.[10] It is to be noted that all these cases are predicated largely on the theory that the bank has an opportunity to verify the drawer's signature and the state of his account, but has no means of ascertaining by comparison whether the payee's indorsement has been forged, or his name altered, or the amount of the instrument raised. But, as a matter of fact, if the drawer's name has been so skillfully forged as to pass undetected by the bank despite reasonably prudent comparison, how has the bank any more chance to discover the forgery than to find the alteration of the amount or payee?[11]

Professor Ames vigorously contended before the Act that on principle an alteration, before acceptance, of any of the terms of an originally genuine bill should not affect the liability of the acceptor to an innocent holder,[12] and, taking the words of the Act literally, there is much to commend this view. The acceptor engages that he will pay the instrument "according to the tenor of his acceptance."[13] A drawee accepting an instrument raised from $100 to $1000 contemplates paying $1000, and, as in the instant case, where P's name as payee has been changed

[7] *Farmers' Nat. Bank of Augusta* v. *Farmers' and Traders' Bank* (1914) 159 Ky. 141, 166 S. W. 986; *Trust Company of America* v. *Hamilton Bank* (1908) 127 App. Div. 515, 112 N. Y. Supp. 84. The former case in permitting the drawee to recover shows the desire to avoid the *Price* v. *Neal* rule; but the latter case correctly argues that the payee is really fictitious in that the forger did not intend him to have an interest in the instrument. *Cf. State Bank* v. *Cumberland, etc. Co., supra,* footnote 3.

[8] *Bank of Commerce* v. *Union Bank* (1850) 3 N. Y. 230; *White* v. *Continental Nat. Bank* (1876) 64 N. Y. 316; *Espey* v. *Bank of Cincinnati* (U. S. 1873) 18 Wall. 604; *contra, Louisiana National Bank* v. *Citizens' Bank* (1876) 28 La. Ann. 189.

[9] *National Reserve Bank* v. *Corn Exchange Bank* (1916) 171 App. Div. 195, 157 N. Y. Supp. 316; *McClendon* v. *Bank of Advance, supra,* footnote 3; *cf. Interstate Trust Co.* v. *United States National Bank* (1919) 67 Colo. 6, 185 Pac. 260; *contra, Ozark Savings Bank* v. *Bank of Bradleyville* (Mo. App. 1918) 204 S. W. 570.

[10] *Interstate Trust Co.* v. *United States National Bank, supra,* footnote 9. (There was no certification here, merely payment, but that ought to make no difference, provided there has been a change of position in reliance on payment. See also comment, *supra,* footnote 6); see *Central & National Bank* v. *F. W. Drosten Jewelry Co.* (1920) 203 Mo. App. 646, 658, 220 S. W. 511, 514.

[11] The doctrine of *Price* v. *Neal* is not really to be explained on the ground of negligence, since the bank may not have been negligent, and negligence in the absence of a prejudicial change of position does not prevent recovery for payment under a mistake of fact. To this effect see the article by Professor Ames in (1891) 4 Harvard Law Rev. 297. The rule as to a certification in misreliance upon the state of the drawer's account seems based to some extent on negligence, for where no damage has resulted, *i. e.,* where there has been no change in reliance, the certification may be withdrawn, although the bank was negligent. See *National Bank of California* v. *Miner; Baldinger* and *Kupferman etc.* v. *Manufacturers-Citizens, etc., supra,* footnote 5.

[12] 2 Ames, *Cases on Bills and Notes* (1894) Index and Summary, p. 791. Also (1891) 4 Harvard Law Rev. 306, 307; Brannan, *The N. I. L. Annotated* (1920) 225, and *Cherokee National Bank* v. *Union Trust Co., supra,* footnote 3, p. 347, cite this with approval under the Act. Professor Ames admitted the authorities before the Act were against his view in the cases of certification of checks.

[13] "According to the tenor of his acceptance" may well be taken merely to mean according as the acceptance is general or qualified. Since subsection (2) expressly covers the case of the payee, it is doubtful whether tenor of acceptance was meant to refer to the payee.

to Z, the acceptor expects to pay a bill with Z as payee. On the other hand, "the acceptor admits the existence of the payee, and his then capacity to indorse." From this it can be argued that there can be only one actual payee, and the insertion of Z's name does not make him payee;[14] and, furthermore, the drawee intends to accept the bill as drawn by the drawer. Yet it seems odd to say that the acceptor admits the existence of P, who so far as the acceptor knows, never had the remotest connection with the bill. The position of Professor Ames is supported by analogy in that a person negotiating an instrument by indorsement is taken to warrant its genuineness and his title.[15] Thus, generally on the theory that the indorsement was a new and separate contract,[16] it is no defense against a bona fide transferee for an indorser to show that a note was void by statute, having been given in payment of a gambling debt,[17] or void for usury,[18] or that the maker's signature was forged,[19] or made by an agent without authority,[20] or that the payee's indorsement was forged,[21] or that the issue of the instrument was *ultra vires*.[22]

An additional element, not present in the forgery cases, should be considered in connection with the cases dealing with a raised amount or altered payee; namely, the effect of § 124, which states that a material alteration avoids an instrument except as against an assenting party and subsequent indorsers, but a holder in due course may enforce payment according to its original tenor. It would follow that an acceptor of a raised bill would be liable at least for the original amount,[23] but curiously enough, the courts have usually failed to consider the applicability of this section.[24] A change of the name of the payee is also a material, avoiding alteration.[25] But the difficulty is not present in the instant case, for the instrument in its original tenor is payable to the original payee who must indorse it, and, hence, in two promissory note cases where the question has come up the courts have declared that the bona fide holder may not recover on an instrument where the payee's name has been altered.[26]

It would seem then, that so far as the Act is concerned, the result of the instant case could be sustained or denied. But it is not in accord with the policy of limiting *Price* v. *Neal* and allowing recovery of money paid under a mistake of fact. Assuming, as the cases usually do, that certification means only vouching

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[14] This answer depends on the definition of payee—whether it means a person, or a name present in the payee space.

[15] See N. I. L. §§ 65, 66.

[16] Professor Ames has said it is not really a contract of warranty, but the indorser in effect is drawing a new bill and what has occurred before is immaterial. 2 Ames, *op. cit.* 233, n. 1.

[17] *Wachovia Bank & Trust Co.* v. *Crafton* (N. C. 1921) 107 S. E. 316.

[18] *Horowitz* v. *Wollowitz* (1908) 59 Misc. 520, 110 N. Y. Supp. 972.

[19] *Lennon* v. *Grauer* (1899) 159 N. Y. 433, 54 N. E. 11 (before N. I. L.).

[20] *Wamesit National Bank* v. *Merriam* (1916) 114 Me. 437, 96 Atl. 740.

[21] *Packard* v. *Windholz* (1903) 88 App. Div. 365, 84 N. Y. Supp. 666; *aff'd* (1905) 180 N. Y. 549, 73 N. E. 1129; *Main Street Bank* v. *Planters' National Bank* (1914) 116 Va. 137, 81 S. E. 24.

[22] *Devoy and Kuhn Coal and Coke Co.* v. *Huttig* (1916) 174 Iowa 357, 166 N. W. 412.

[23] *McClendon* v. *Bank of Advance, supra,* footnote 3.

[24] See cases, *supra,* footnotes 8 and 9. One can interpret § 124 as covering only alterations made after the acceptor becomes liable, by likening subsequent acceptors to subsequent indorsers; but the section mentions only indorsers. Otherwise the view taken by Brannan, in supporting Professor Ames, of the words "engages to pay according to the tenor of his acceptance" in § 62 would conflict with § 124. See *supra,* footnote 13.

[25] *International Bank* v. *Mullen and Mullen* (1911) 30 Okla. 547, 120 Pac. 257; *Hoffman* v. *Planters' National Bank* (1901) 99 Va. 480, 39 S. E. 134.

[26] *Andrews* v. *Sibley* (1914) 220 Mass. 10, 107 N. E. 395; *First National Bank* v. *Gridley* (1906) 112 App. Div. 398, 98 N. Y. Supp. 445.

for the drawer's signature and sufficiency of funds, the fact that an innocent party has acted in reliance upon it to his detriment is no ground for casting the loss on the bank, which has made no misrepresentation. Besides, it is extremely difficult to distinguish in substance the wrongful insertion of a new name and indorsement of that name, from a plain forgery of the payee's name, and in the latter case it is generally held that the drawee bank can recover the money paid. And such a rule has been found to satisfy commercial convenience. Therefore, especially in the light of the decisions on similar sets of facts, it is submitted that the instant case reaches the less desirable result.

WORKMEN'S COMPENSATION ACTS AND THE CONFLICT OF LAWS.—In a tort action at law for damages resulting from negligent injury, the prevailing conflict of laws doctrine is that the *lex loci delicti* controls;[1] though where the duty arises out of a contract, the *lex loci contractus* has been applied.[2] Since the passage of workmen's compensation acts, interesting problems in the conflict of laws have arisen.[3] It is believed there are five groups of possible operative facts: first, where the contract of employment is made, the injury occurs, and the suit is brought in state X; second, where the contract is made and the injury occurs in state X, but suit is brought in state Y; third, where the contract is made in state X, the injury takes place in state Y, and compensation is sought in state X; fourth, where the contract is made in state X, the injury occurs in state Y, and suit is brought in state Y; and fifth, where the contract is made in state X, the injury occurs in state Y, and suit is brought in state Z.

The first group, of course, presents no conflict of laws problem and throws no light on the nature of such statutes.[4]

While properly not involving any question of the extraterritorial effect of compensation statutes, the second group of cases presents several interesting questions in the conflict of laws. Clearly the Y statute could not apply.[5] Where a valid obligation arises in state X under the laws of state X, the general conflict of laws rule is that it is enforceable in state Y [6] unless some policy of the forum prevents.[7] And this would be true whether the duty were considered to be one arising out of contract or tort. If there is a workmen's compensation act in state X it is a good defense to another form of action in state Y;[8] or to a claim to compensation under the statute of the forum.[9] If, however, the statute creating the obligation provides a peculiar remedy for the right created, the courts of the forum will refuse to take jurisdiction.[10] Thus the courts of state Y are

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[1] *Alabama Great Southern R. R.* v. *Carrol* (1892) 97 Ala. 126, 11 So. 803.

[2] *Dyke* v. *Erie Railway* (1871) 45 N. Y. 113.

[3] Angell, *Recovery Under Workmen's Compensation for Injury Abroad* (1918) 31 Harvard Law Rev. 619.

[4] Unless for instance some question as to the statute of limitations is involved. See *Bauer* v. *Common Pleas of Essex* (1915) 88 N. J. L. 128, 95 Atl. 627.

[5] See *Simpson* v. *Atlantic Coast Shipping Co.* (1920) 191 App. Div. 844, 182 N. Y. Supp. 331.

[6] *Hamm* v. *Rockwood Sprinkler Co.* (1916) 88 N. J. L. 564, 97 Atl. 730.

[7] See *Pensabene* v. *Auditore Co.* (1913) 155 App. Div. 368, 375, 140 N. Y. Supp. 266.

[8] *Prdich* v. *New York Cent. R. R.* (1920) 111 Misc. 430, 183 N. Y. Supp. 77. A common law action for damages cannot be brought. *Bozo* v. *Central Coal & Coke Co.* (1919) 54 Utah 289, 180 Pac. 432.

[9] *Thompson* v. *Foundation Co.* (1919) 188 App. Div. 506, 177 N. Y. Supp. 58.

[10] *Verdicchio* v. *McNab & Harlin* (1917) 178 App. Div. 48, 164 N. Y. Supp. 290 (where the court refused to hear the case on the ground that the New Jersey statute under which the claim was made provided a forum in the Court of Common Pleas of New Jersey). But see *Douthwright* v. *Champlin* (1917) 91 Conn. 524, 529, 100 Atl. 97.